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ABSTRACT

One of a series of guides on implementing the Americans with Disabilities Act (ADA), this guide focuses on cultural diversity and the ADA. First, the major components of the ADA are summarized. This is followed by discussion of employer considerations in addressing cultural diversity issues and implications of the ADA, such as diversity initiatives led and supported by management, development of training programs which focus on communication skills and compliance with the ADA, writing of job descriptions that identify essential job functions, and non-discriminatory performance appraisals. The meaning of "reasonable accommodation" is addressed, noting criteria for whether such an accommodation would create an "undue hardship" for the employer. The guide ends with some suggested implementation strategies to heighten awareness of ADA through cultural diversity initiatives in business and industry. These include affirmative action initiatives to actively recruit individuals with disabilities, provision of training and promotion opportunities to minority individuals and those with disabilities, and integration of the nondiscrimination requirements of the ADA in all facets of personnel training and human resources practices. Suggested organizational resources are listed. (DB)

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CULTURAL DIVERSITY AND THE ADA

ED 418 513

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Program on Employment and Disability
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What is the Americans with Disabilities Act?

The Americans with Disabilities Act (the "ADA"), passed in 1990, is legislation intended to protect and guarantee access and participation in society for persons with disabilities. The statute is specifically directed at employment, public accommodations, public services (i.e., services delivered by state and local governments), transportation, and telecommunications. Title I of the ADA prohibits discrimination against qualified persons with disabilities in all terms, conditions, and privileges of employment, including recruitment, pre-employment screening, hiring, benefits, promotions, layoff and termination.

Under the ADA, an employer must provide an effective reasonable accommodation when a qualified individual with a disability requests a needed accommodation, unless the employer can demonstrate that it would be an undue hardship to do so. An employer may not deny an employment opportunity to a qualified applicant or employee with a disability because of a request or need for a reasonable accommodation.

As of July 26, 1994, Title I of the ADA applies to employers of 15 or more employees, employment agencies, labor organizations, and joint labor-management committees.

What are employer considerations in addressing cultural diversity issues?

Broadly defined, diversity issues can encompass ethnicity, gender, age, religion, and sexual preference considerations for individuals in the workplace and their employers. According to Department of Labor projections, diversity will increase dramatically in the coming years. Changes in the labor market are expected to result in a shortage of traditional workers, leading to increased reliance on non-traditional populations. In addition, cultural diversity is becoming more important as the globalization of business makes a diverse workforce essential. By the year 2000, one-third of all new workers will be non-white; two-thirds will be women; and the average age of workers will increase. The religious diversity of the workforce is also expected to increase.

Diversity poses many challenges to employers and as the diversity of the workforce increases, so will the challenges. Diverse populations bring different attitudes, perceptions, motivations, and needs to the workplace. Productive work requires that employees have their needs adequately addressed and have effective communication with co-workers. This creates challenges to employers in terms of training, supervision, loyalty, group cohesion, rewards, co-worker and management tolerance, and special support needs.

What implications does the Americans with Disabilities Act have for cultural diversity issues?

Companies now realize that homogenizing the workforce is not an effective response to workforce diversity. More and more companies are finding that valuing differences and managing diversity minimizes the potential productivity losses which can arise from the challenges that diversity presents, and thereby better harnesses the productivity gains possible from a diverse workforce. Additionally, such efforts can contribute towards compliance with federal non-discrimination laws and help to attract non-tradi-

tional workers who will be needed to fulfill future labor market demands. Surveys indicate that about 50% of employers with 100 or more employees have cultural diversity initiatives in place today.

Valuing diversity involves recognizing and appreciating the differences of individuals. Managing diversity emphasizes developing company policy, culture, and goals to optimize the productivity of an organization's employees by utilizing their differences.

Model programs have revealed that diversity initiatives require the support of top management. Managing diversity changes the culture of the organization to reflect the valuing and utilization of employee differences. As with any change in corporate culture, the lead must come from the top, with management embracing the diversity initiative to assure employees of a real change in the company's position.

Successful diversity initiatives include an array of programs. Generally, these programs include some form of training and some effort to change the communication norms of the organization. Specifically, employee surveys, cultural networks, diversity-management training, and mentoring programs are frequently begun to assess and broaden the attitudes of employees and management. In addition, many corporations investigate their reward systems to ensure that employees are not being evaluated on their personal style but rather on the merits of their work. As a part of the initiative, sometimes flexibility is incorporated into the work schedule.

Employers are also making strides in assuring compliance with the Americans with Disabilities Act employment provisions in their workplace environment. This may mean training a number of personnel on the following topics relating to ADA implementation:

- Employment pre-screening and applicant interviewing under the ADA
- Interface of the ADA with other state and federal employment and non-discrimination legislation
- Writing job descriptions that identify essential job functions
- The reasonable accommodation process
- Career equity/promotional considerations for persons with disabilities
- Non-discriminatory performance appraisals
- Customer relations with customers with disabilities
- Negotiation/conflict management in the reasonable accommodation process

Since one of the major barriers that is found in the hiring and retention of persons with disabilities in the workplace is attitudinal bias, it is a logical extension of cultural diversity training to integrate into existing training concerns about discrimination for people who are different by virtue of a physical or mental impairment. Such awareness is imperative to effective implementation of the reasonable accommodation process under the employment provisions of the Americans with Disabilities Act.

What is Reasonable Accommodation?

Reasonable accommodation is any modification of or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to participate and enjoy equal employment opportunity.

Reasonable accommodation includes, but is not limited to, modification or adjustment of the application process to enable qualified individuals with disabilities to apply, making facilities readily accessible to and usable by persons with disabilities, modifying work schedules, reassignment to a vacant position, reallocating non-essential job functions, and acquisition or modification of equipment or devices. An employer is not required to reallocate essential job functions. An employer is also not required to create a "light-duty" position.

An employer is not required to provide a reasonable accommodation if it would create an **undue hardship** for the employer. Whether a reasonable accommodation creates an undue hardship is a factual issue depending on factors such as the nature and net cost of the accommodation and the size and nature of the business. The duty of reasonable accommodation is situation-specific.

What is the Reasonable Accommodation Process?

In determining a reasonable accommodation under the ADA, if an effective accommodation is not obvious, the employer and employee may wish to engage in a flexible interactive process to determine an appropriate accommodation. Generally, if an individual with a disability wants a reasonable

accommodation, he or she must request one. If the employer has not done so, it should determine the essential functions of the job involved, then consult with the individual requesting accommodation to determine the job-related limitations imposed by the individual's disability and how those limitations could be overcome with a reasonable accommodation. The possible accommodations should be evaluated, and an effective accommodation selected. While the employee's preference is given consideration, the employer has the discretion to chose between equally effective reasonable accommodations.

It is important that the concept of non-discrimination and equal access for persons with disabilities be an ongoing discussion in the workplace. It will be easier to facilitate the accommodation process and make needed changes to meet an individual's specific needs when a climate of receptivity to the principles and requirements of the ADA has been fostered through ongoing discussion. For example, negotiating a job restructuring for a particular individual will likely be more easily facilitated if co-workers have already been apprised of the organization's commitment to reasonable accommodation and the non-discrimination values inherent in the ADA. An example is when a person has difficulty performing a non-essential function of a job and the accommodation is having other employees pick up some of those tasks. Effecting such a task reallocation will be easier when the work force is prepared through prior training and ongoing group dialogue on accommodation issues.

The ADA contains strict confidentiality requirements pertaining to medical information obtained during a medical examination or inquiry. Medical information must be collected and maintained on separate forms and in separate medical files, and kept confidential. There are certain narrow circumstances when such information may be disclosed, including informing supervisors and managers about necessary work restrictions or accommodations.

What are some suggested implementation strategies to heighten awareness of the ADA through cultural diversity initiatives in business and industry?

Successful implementation of both cultural diversity and ADA initiatives require efforts to change corporate culture and attitudes. Both suggest the need for personnel training on non-discrimination practices, flexibility in work schedules and investigation of employee evaluation and reward structures. These similarities suggest that the combination of disability and cultural diversity initiatives is both possible and advisable. Conducting separate initiatives may result in duplication of efforts and consume much more time, especially when training and policy evaluations are included in the initiatives.

Selected strategies that will both further cultural diversity and implementation of the ADA might be as follows:

- Affirmative action initiatives, if chosen to be undertaken, could include active recruitment of individuals with disabilities to the workplace, through collaborative agreements with state Vocational Rehabilitation agencies or local job placement services for individuals with disabilities.
- Training and promotional opportunities should afford all minorities an opportunity to advance their job options; for individuals with disabilities, this may be the provision of needed supports to enable them to access training, consider new positions, or acquire needed retraining when a disability occurs that prevents a return to the original job position.
- Integration of the nondiscrimination requirements of the ADA for persons with disabilities in all facets of personnel training and human resources practices.

These are only a few of many proactive initiatives which employers can take to recruit and retain individuals with disabilities in the workplace, thereby expanding their potential labor pool and maximizing human resources to enhance workplace outcomes.

Resources

ADA Regional Disability and Business Technical Assistance Center Hotline, (800) 949-4232 (voice/TTY).

Job Accommodation Network, West Virginia University, PO Box 6080, Morgantown, WV 26506-6080, (800) ADA-WORK (voice/TTY).

Equal Employment Opportunity Commission, 1801 L Street, NW, Washington, DC 20507, (800) 669-4000 (Voice) to reach EEOC field offices; for publications call (800) 800-3302 or (800) 669-EEOC (voice/TTY).

American Institute for Managing Diversity, Morehouse College, Box 83, 351-55 Westview Drive, Atlanta, GA 30314, (404) 756-1170

American Society for Training and Development, 1640 Kings Street, Box 1443, Alexandria, VA 22313, (703) 683-8100

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In addition to serving as a National Materials Development Project on the Employment Provisions of the Americans with Disabilities Act of 1990, *the Program on Employment and Disability* also serves as the training division of the Northeast Disability and Business Technical Assistance center. This publication is one of a series edited by Susanne M. Bruyere, Ph.D., C.R.C., Director of the ILR Program on Employment and Disability at Cornell University.

OTHER TITLES IN THIS *IMPLEMENTING THE ADA* SERIES ARE:

A Human Resource Perspective on Implementing the ADA
Pre-Employment Screening Considerations and the ADA
Pre-Employment Testing and the ADA
Reasonable Accomodations Under the ADA
Health Benefit Plans and the ADA
The ADA and Injured Workers
The ADA and Collective Bargaining Issues
The ADA and Porsonnel Training
The ADA and Total Quality Management
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These and other informational brochures can be accessed on the World Wide Web at:
www.ilr.cornell.edu/ped/ada

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